



OLC 76-2835/a

7 OCT 1976

Mr. James M. Frey, Assistant Director
for Legislative Reference
Office of Management and Budget
Washington, D. C. 20503

Dear Mr. Frey:

This is in response to your request for our comments concerning enrolled bill, H.R. 13615, "To amend the Central Intelligence Agency Retirement Act of 1964 for Certain Employees, as amended, and for other purposes."

Title I of H.R. 13615 improves the financial soundness of the CIA Retirement Fund by adopting procedures approved by the 91st Congress for the Civil Service and Foreign Service retirement systems and for the Foreign Service retirement system in the 94th Congress. There is one important difference in that the Agency's funding procedures provide for annual appropriation authority rather than the indefinite permanent authority for the Civil Service and Foreign Service retirement systems. Under Title I, an annual appropriation, beginning fiscal year 1977, would be authorized under a formula to cover outlays not met by contributions.

Based on the President's original budget request for fiscal year 1977, [] for this purpose was included in the Defense Appropriations Act for fiscal year 1977, Public Law 94-419, subject to the passage of authorizing legislation. The \$28.3 million figure was based on a 1968 actuarial study prepared by the Actuary of the Treasury Department. Subsequent to the submission of this legislation to the Congress, an updated actuarial study was completed. Enclosed is the revised cost estimate for the projected fiscal years 1978 to 1982 based on the updated study. These figures do not include any anticipated pay raises or annuity increases based on cost-of-living adjustments.



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Title II of H.R. 13615 conforms the CIA Retirement System with changes in the Civil Service retirement system to establish parity between the two systems. These include surviving spouse annuities and benefits; definition of surviving child; increase in annuities to certain retirees prior to 20 October 1969; establishment of a minimum annuity; retirement credit for separation for work injuries; retirement credit as military service for certain service in the Public Health Service or the Coast and Geodetic Survey; disability annuities; waiver of payments in certain instances; and changing of a beneficiary.

Title II also proposes an administrative procedure, by Executive order, to adopt for the Agency system future changes in the Civil Service system which are substantially identical to provisions in the Agency system. This was approved for the Foreign Service retirement system in Section 503 of Public Law 94-350.

Also enclosed is a Sectional Analysis of H.R. 13615 which explains all provisions of the bill.

We strongly urge that the President approve this legislation which is vital to the Agency's retirement program and our retirees.

Sincerely,

[Redacted Signature]

E. H. Knoche
Deputy Director

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Enclosures

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SECTIONAL ANALYSIS

SECTIONAL ANALYSIS AND EXPLANATION

TITLE I--FINANCING

Section 101 amends section 111 of the Central Intelligence Agency Retirement Act of 1964 for Certain Employees, as amended, to add three definitions concerning the funding of the System:

"Fund balance" is defined as the par value of securities in which retirement money is invested plus the uninvested cash remaining in the Retirement Fund.

"Unfunded liability" is defined as the estimated amount needed to finance all benefits payable from the Fund less the money now in the Fund and to be placed in the Fund in the future.

"Normal cost" is defined as the level percentage of payroll required to meet the cost of benefits payable under the System, less the expenses attributable to service performed under another retirement system.

The preceding definitions are necessary for implementing subsequent provisions of the bill; definitions comparable to the first two were adopted by the Civil Service Retirement System under section 101(3) of Public Law 91-93; the normal cost definition is similar to that proposed for the Foreign Service system under Section 512 of Public Law 94-350.

Section 102 amends section 261 of the Act to add three new paragraphs concerning the funding of the System:

New paragraph (b) authorizes appropriations to the Fund in equal annual installments over a 30-year period to finance any newly created unfunded liability incurred by the enactment of future legislation, or the exercise of authority based on statute, including benefit improvements for active employees, extension of coverage to new groups of employees, general salary increases, and any new statutory annuity increases (other than automatic cost-of-living adjustments). Interest would be required to be included in these amortized payments at the rate used in the then most recent valuation of the system.

New paragraph (c) provides authority for annual appropriations, for that portion of the normal cost of the system which is not being currently defrayed by contributions.

New paragraph (d) provides authority for annual appropriations, for interest on the unfunded liability computed for that year at the interest rate used in the then most recent valuation of the system, and for that portion of disbursement for annuities for that year which the Director estimates is attributable to credit allowed for military service. Payments under this paragraph would commence with fiscal year 1977, at 70 percent of the prescribed amount. An additional 10 percent would be paid in each subsequent year until, in 1980 and in each subsequent year, 100 percent of the prescribed amount would be paid.

Provisions identical to new paragraphs (b) and (d) except for a change in the effective date and a change in the appropriation authority in paragraph (d), were enacted for the Civil Service by Sections 103(a)(2) and 103(b) of Public Law 91-93 and for the Foreign Service by Sections 104(a) and 104(b) of Public Law 91-201. A provision similar to new paragraph (c) has been adopted for the Foreign Service system, except for a change in the appropriation authority, in Section 512 of Public Law 94-350.

TITLE II--RETIREMENT ACT AMENDMENTS

Section 201 removes dependency requirements from the definition of the term "widower" and thereby conforms the Act to the requirement of Public Law 92-187 concerning equality of benefits for married women Federal employees. As a result, widowers of female participants or retirees will be accorded the same benefits as widows of deceased male participants or retirees. Section 201 also changes the definition of child to include an adopted child who is under a petition for adoption at the time of the participant's death and makes such child eligible for survivorship benefits if the surviving spouse proceeds with the adoption. Section 201 further changes the definition of "widow" and "widower" to reduce from two years to one year the marriage requirement to be entitled to a survivor annuity and thereby conform the Act to Public Law 93-260.

Section 202 amends the Act as follows:

First, it amends the current provision for annuity for surviving spouse to whom the retiree was married at the time of retirement by authorizing payment of that annuity to a subsequent spouse. The spouse acquired after retirement must qualify as a widow or widower as those terms are defined in section 204 of the Act as amended by section 201 of the bill.

Second, it authorizes a survivor annuity for a widow or widower of a retiree who was unmarried at the time of retirement, subject to the election of a reduced annuity for this purpose by the retiree pursuant to section 203 of the bill.

Third, it requires the surviving spouse, widow, or widower to elect between the benefits afforded under section 202 of the bill and any other entitlements to survivor benefits from a retirement system for Government employees.

Fourth, it provides for the commencement and termination date for the survivor annuities provided under section 202 of the bill.

Fifth, it provides that a participant must at the time of retirement elect in writing not to provide any surviving spouse benefits as provided in section 221(b). This adopts a provision in Section 8339(j), Title 5, of the Civil Service retirement system.

Finally, it provides that annuities reduced to provide for a surviving spouse shall for each full month during which an annuitant is not married, be recomputed and paid as if the annuity had not been reduced. Upon remarriage, the annuity would be reduced by the same percentage as in effect at the time of retirement. All annuities are covered except no increase in annuity may be made for any period prior to November 1, 1974. This conforms the Act to Public Law 93-474, which became effective October 26, 1974.

Section 203 provides a retiree who is unmarried at the time of retirement with an irrevocable election to select a reduced annuity and provide, under section 202 of the bill, survivorship protection for a spouse acquired after retirement. The election must be received within one year after the marriage and voids any election made at the time of retirement for a survivor annuity for an individual with an insurable interest as authorized under current law (section 221 of the Act). The retiree's annuity is paid at the reduced rate starting with the first day of the month following receipt of the election.

Section 204 imposes a minimum retirement annuity based upon the Social Security minimum primary insurance amount and conforms the Act to the requirements of Public Law 93-273, which increased certain annuities and was signed into law April 26, 1974. The annuitant's monthly benefit would not be increased to such minimum if the individual receives any other periodic payment from the United States Government of a similar nature, including, but not limited to, social security, annuity, other civilian or military retired pay, pension, or veterans compensation, and the monthly rate of such periodic payment equals or exceeds the smallest primary insurance amount which may be in effect from time to time.

Sections 205, 206, and 207 amend section 231 of the Act to allow persons who are separated or retired on a nondisability retirement to later apply under specified requirements for a disability retirement if a disabling condition existed at the time of separation or retirement. The changes also grant termination authority to the Director in those instances where there has been restoration of earning capacity; allow voluntary or involuntary retirement for such restored retirees; and assure that periods of voluntary or involuntary retirement do not count for service credit. These amendments adopt existing authorities in Section 8337, Title 5, of the Civil Service retirement system.

Section 208 changes the "Death in Service" provisions of the Act (section 232) to remove the dependency requirements currently attached to the payment of a survivor annuity to a widower of a female participant who dies in service. The changes are compatible with the changes made in the definition of the term "widower" under section 201 of the bill.

Section 209 amends section 241 of the Act with regard to filing designation of beneficiary for the payment of contributions and interest in excess of benefits received to survivors of participants under the Act. The amendment states clearly that the order of preference set out in that section shall prevail over any extraneous document designating a beneficiary unless the designation has been received by the Director. This conforms the Act to a similar provision in the Civil Service Retirement system under Public Law 89-373 approved March 23, 1966. The provision was sought by the Civil Service Commission to make clear that the statutory order of precedence prevails and avoid the problems of conflicting case law and resultant serious delays in paying insurance claims to survivors. Adoption of the provision by the Central Intelligence Agency Retirement Act will avoid these same problems.

Section 210 updates the citation in section 251 of the Act. Section 210 also provides retirement service credit for periods of separation from Federal Government employment covered by employees' compensation for work injuries under 5 U.S.C. 8101 et seq.

Section 211 amends section 252 of the Act to credit service in the Regular or Reserve Corps of the Public Health Service after June 30, 1960, or as a commissioned officer in the Coast and Geodetic Survey after June 30, 1961. This conforms the Act to Public Law 86-415, approved April 8, 1960, which credits, as military service under the Civil Service Retirement Act, certain prior service in the Regular or Reserve Corps of the Public Health Service after June 30, 1960, and conforms the Act to Public Law 87-233, approved September 14, 1961, which similarly credits under the Civil Service system service as a commissioned officer in the Coast and Geodetic Survey (now functionally within the National Oceanic and Atmospheric Administration).

Section 212 adds a new section to "PART G--MONEYS" to grant the Director the authority to waive recovery of payments from a recipient made under the Act if in the judgment of the Director the individual is without fault and recovery would be against equity and good conscience. This section also allows the Director to withhold or recover moneys mentioned under the Act from a former employee of the Agency where there is a finding and certification by the Director that the former employee exercised fraud. This section conforms the Act

to a similar provision in the Civil Service retirement system (section 8346 of Title 5, U.S.C., Public Law 89-554), which became effective September 6, 1966. The necessity for this provision was highlighted as the result of the recent overpayment in cost-of-living increases for all Government retirement systems based on a miscalculation of the data utilized. This section would be made effective sufficiently retroactive to allow the Director to waive the overpayment to annuitants under the Agency's retirement system as was done by the Civil Service Commission in December 1974 for Civil Service retirees.

Section 213 adds a new "PART K--CONFORMITY WITH CIVIL SERVICE RETIREMENT SYSTEM" to the Act to authorize administrative changes in Central Intelligence Agency retirement provisions to maintain existing conformity between the Civil Service and Central Intelligence Agency retirement systems. Under this amendment, whenever a law enacted after January 1, 1975 amends a provision of the Civil Service retirement system or otherwise changes retirement benefits for employees or annuitants under that system which prior thereto had been substantially identical to a corresponding provision of law governing benefits payable under the Central Intelligence Agency retirement system, the President, if he determines it appropriate to maintain the previous conformity between the two systems could issue an order to apply the new Civil Service provision or benefit to the Central Intelligence Agency. This could be done retroactively in the interest of equity where necessary.

In addition to the applicability of this proposal to amendments of Civil Service retirement provisions that were substantially identical to corresponding Central Intelligence Agency retirement provisions immediately prior to enactment of the Civil Service amendment, it is intended that the proposal apply to amendments of Civil Service provisions enacted after January 1, 1975 but before enactment of this bill which were substantially identical either to corresponding Central Intelligence Agency retirement provisions when this bill is introduced or to Central Intelligence Agency retirement provisions as proposed in this bill.

Authority would not be available under the proposal to change a Central Intelligence Agency retirement provision that had not been substantially identical to the Civil Service provision prior to the latter's amendment. For example, if the present regular Civil Service multiplication factor, which is less than 2 percent for the first ten years of service, were increased, a corresponding increase could not be extended to the Central Intelligence Agency retirement system multiplication factor is 2 percent for all years of service. Neither could a change affecting

only a special group, such as the change in the law-enforcement employee multiplication factor made by Public Law 93-950, be extended to the Central Intelligence Agency retirement system under this authority because this proposal would be applicable only to amendments of Civil Service retirement provisions applicable generally.

Section 213 is based upon Section 512 of Public Law 94-350, which amended the Foreign Service Retirement Act. This establishes authority to adopt by administrative action applicable changes in the Civil Service system and shortens the existing time lag resulting from normal Executive and Legislative processing to adopt separately for the Agency retirement system each applicable change in the Civil Service system. The proposal does not in any way abridge the right of Congress to enact future laws changing the Central Intelligence Agency retirement system provisions or benefits.

Section 214 increases annuities that occurred prior to October 20, 1969, and further conforms the Act to the requirements of Public Law 93-273, which authorized payment effective August 1, 1974. Retirees under the Act (and Civil Service retirees) prior to October 20, 1969, did not receive the liberalization in retirement computation made under Public Law 91-185, effective December 30, 1969. Under Public Law 91-185 the computation of annuities was changed from a high -5 years average salary to a high -3 years average salary and unused sick leave was counted as service for annuity computation purposes.

Section 215 provides effective dates in phase with those established for the Civil Service Retirement System in connection with identical changes. These dates assure that the treatment afforded retirees and their survivors under the CIA Retirement Act will not be different than that afforded retirees and their survivors under the Civil Service Retirement System. Section 215 provides that all of the provisions in the bill become operative effective October 1, 1976.

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